IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

MISC.CIVIL APPLICATION NO.2 OF 2006

Shri Mohan R. Dewan. ..Applicant.

V/s.

Smt.Urmila M. Dewan. ..Respondent.

Mr.V.A.Gangal with Harshad Deshpande for applicant.

Mr.Sajan Oommen for Respondent.

CORAM: A.M.KHANWILKAR,J
DATE : MARCH 3, 2006.

P.C. :

1. Heard counsel for the parties. Perused the relevant documents and pleadings on record.

2. This application is for transfer of M.J.Petition No.A-220/2001 pending before U.K.Hanwate, the 4th Judge of Family Court at Bandra, Mumbai to any other Judge, Family Court, Mumbai. The petition is filed on the ground that the concerned Judge is not dealing with the matter with even hands and seems to be inclined to oblige the respondents.

3. During the course of argument Mr.Gangal canvassed four points on which prayer for transfer should be granted. According to him, the concerned Judge has rejected the application preferred by the

applicant from time to time on flimsy ground; on the other hand, the applications made by the respondent have been granted. Besides, it is contended that the advocate for the respondent used abusive and insulting language against the advocate for the petitioner before the trial court. Inspite of that the learned Judge did not control the proceedings. It is also suggested that even the learned Judge made unwarranted remarks against the advocate for the petitioner. On the above basis it is contended that the petitioner/applicant has reason to believe that he will not get justice at the hands of the learned Judge. On these contentions it is prayed that the case should be transferred to some other court.

4. To ascertain the correctness of the grievance made before this court, with the assistance of the counsel appearing for the parties, I have gone through the pleadings. In so far as the grievance of the applicant that the learned Judge has rejected the application preferred by the applicant on flimsy ground, the same deserves to be straightway rejected. This is so because, my attention was invited only to the orders passed at Exh. 141 and 163 dated 2nd June, 2005 and 6 December, 2005 respectively. On fair reading of the said orders, it is not possible

to countenance the grievance of the applicant that the applications preferred by the applicant have been rejected by the learned Judge on flimsy ground. As a matter of fact, the order passed on 2nd June, 2005 at Exh. 141 which application was taken out by the applicant, in substance prayed for initiating contempt action against the respondent. Learned Judge has observed in paragraph 3 of the order that serious allegations have been and considering the reply filed by the respondent it would be appropriate to call the witnesses in court. Accordingly, court proceeded to pass order requiring the witnesses to remain present before the court. In that sense, the application taken out by the applicant was not rejected by this order muchless or filmsy ground as alleged. In so far as order passed below Exh.163 is concerned, on fair reading of the order, the impression that I can gather from the order is that the learned Judge has observed that the allegations in the application is one for initiating contempt action, which will have to be considered independently and merely because that application is taken out, the main trial need not wait further, as the trial was required to be proceeded in terms of the directions given by the High Court to dispose of expeditiously. The counsel for the applicant further

relies on the observations made in later part of paragraph 3 of the same order to contend that the learned Judge has taken hyper technical view in observing that the applicant has filed application as interlocutory application instead of proper application for initiating contempt action. This argument of the applicant cannot be accepted. We cannot pick up one sentence from the entire order to take a view that application of the applicant is rejected on flimsy ground. As mentioned earlier, the learned Judge has observed that the grievance in the application will be considered in the appropriate proceedings. That is the substance of the order passed by the learned Judge. If it is so, it is not a case of rejecting the application taken out by the applicant on flimsy ground. This allegation therefore, is devoid of merits. No other order has been brought to my notice by Mr.Gangal to substantiate the first grievance referred to above.

5. In so far as the grievance of the applicant that the applications preferred by the respondents on the other hand have been decided favourably. However, no specific order has been pressed into service to justify this grievance. The counsel for the applicant Mr. Gangal has placed reliance on the

order Exh.L dated 28th November, 2005 passed by the learned Judge on application Exh. 156. However, that order is on the application preferred by the applicant praying for relief under Order XI Rule 14 of the C.P.Code. The learned Judge after considering the matter extensively, reached at the finding that it is not possible to positively state that the concerned document was in possession of the respondent. That is the view which is a possible view taken by the learned Judge. There is nothing in this order to even remotely suggest that the learned Judge has passed any unusual order against the applicant or was inclined to favour the respondent.

6. That takes us to the grievance about the unwarranted remarks made by the advocate appearing for the respondent against the advocate for the applicant who was senior member of the bar and incidentally happens to be retired Judge of the City Civil Court. The allegations in that behalf are found in paragraph-5 onwards upto paragraph-9 as have been highlighted at the time of argument. The same read thus:

> "5) The applicant states that in the meantime the evidence of the parties were going on and the Applicant’s is in the witness box for over two years and Dr.Rhea,

his daughter is as the witness. The Respondent threatened her daughter Dr.Rhea and tried to influence her by giving her threat. Accordingly, the Applicant filed a Contempt Application at Exh.141 seeking the permission from the Ld.Judge to initiate action the Respondent under the Contempt of Court for interfering in the process of administration of justice, by giving threats to witnesses. The Ld. Judge after even recording the evidence of Rhea and without considering the said application in its proper perspective has dismissed the same, as not tenable.

6) The Applicant states that the Ld.Judge of the Lower Court is not able to control the Ld. Advocate for the Respondent in his passing provocative remarks. Even, the Ld.Judge has not taken any notice at the time of hearing of the Application at Exh. below Exh.‘165’. Hereto annexed and marked Exhibit ‘B’ is a true copy below Exhibit ‘165’ and the Reply thereto and the order passed by the Ld. Judge. The Advocate for the Respondent even used threatening language specially when the Applicant in his Say to Exh.‘165’ brought to the notice of the Ld.Judge his passing order mentioning and directing the Applicant to offer himself for cross-examination, as if he is in a hurry to decide the matter and the Ld.Advocate for the Respondent is in a hurry to start the cross-examination of the Applicant and bypassing the hearing on the Application below Exh.‘141’. The said Application below Exh.‘141’ has a very vital effect in deciding the main Petition. The total attitude and approach of the Ld.Judge clearly shows his biasness below Exh. ‘163’ and ‘165’. Hereto annexed and marked Exhibit ‘C’ is a true copy below Exhibit ‘163’ and the Reply thereto.

7) The Applicant states that the fact that the Ld.Counsel appearing for the Applicant in the Family Court was himself a sitting Judge in the same Family Court earlier appears to be a great handicap to the Applicant. Every time when the matter comes up in the Court, the side provocative remarks are made from the other sides Ld.Counsel or

from the bench. There are uncalled for remarks made by the Ld.Counsel for the Respondent every time like "the Petitioner claims to be an Advocate, does he know what is contempt", he wants to legalise his marriage, he is committing adultery, he does not want to offer himself for trial, he is afraid, he is avoiding trial. Such remarks are allowed to be passed every day, which hampers the fair and free trial.

8) The Applicant states that the Ld.Judge seems not to have kindly taken the order passed by him below Exhibit 127 and Exhibit 128 and his orders of rejecting the Review Applications, where this Hon'ble Court was pleased to set aside the orders and allowed both the said applications in favour of the Applicant.

9) The Applicant states that in the case of Dr.Rhea, his daughter and witness, it was brought to the notice of the Ld.Judge that she is being threatened and coerced by the Respondent every time. A Contempt Application was filed at Exhibit 141. This was with a view to stop further interference in the administration of justice when the trial was on. Instead of hearing and passing appropriate orders by warning the Respondent from interfering with the administration of justice and to permit the witness to give a free and fair witness without fear or favour. The Ld.Judge dismissed the said application on the ground that it is not tenable."

7. Even on liberal consideration of the averments in this part of the application, it is not possible to accept the grievance of the applicant that the learned Judge has failed to control the proceedings or that he made any remark against the advocate for the applicant which was unwarranted. Vague allegation of bias has been made against the

Judge. No specific details are mentioned in the application. The allegations however, are directed against the advocate for the respondent and not against the learned Judge. The respondent has denied the assertions made by the applicant in this part of the application. The respondent has further explained that in fact the advocate for the applicant taking advantage of his position was trying to throw weight. Even if the said case of the Respondent was to be discarded and the case made in the application has to be accepted as it is, it is not possible to take the view that the learned Judge has conducted the proceedings in such a manner so as to give reasonable apprehension to the applicant that he was inclined to favour the respondent and was biased against the applicant. That could have been the ground for transfer of proceedings, which is lacking in the present application. Indeed, Mr.Gangal sought to rely on same documents which form the part of the paper book. However the plea of transfer being of serious consequence and touching upon the independence of the Judge conducting the trial, averments in the application should be descriptive and specific In the present case, as the allegations against the Judge are vague and unsubstantiated, it is not possible to accept the request of transfer

made by the applicant in the present application.

8. While parting I may only observe that both the sides will observe restrain and instead co-operate with the trial Judge for expeditious conclusion of the trial without making allegations and counter allegations against each other-which will go long way and facilitate the learned Judge to dispose of the matter expeditiously.

9. Accordingly, the application is dismissed.